STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 28, 2022)

JOHN DOE,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2022-00466**
	:	
STATE OF RHODE ISLAND, DIVISION OF THE STATE POLICE; JAMES MANNI, Colonel of the State Police,	:	
Defendants.	:	

DECISION

GIBNEY, P.J. The Rhode Island State Police (Defendant) discharged former State Police Officer John Doe (Plaintiff) without the benefit of a hearing as is typically required by G.L. 1956 § 42-28.6-4, the Law Enforcement Officers' Bill of Rights (LEOBOR). (Appl. for an Order Directing Def. to Show Cause Why Certain Rights Should Not Be Afforded Pursuant to LEOBOR (Pl.'s Appl.) ¶¶ 49-50, 55-56.) Defendant contends that Plaintiff was not entitled to a hearing because he executed a prior Disciplinary Consent Agreement (the Agreement) that explicitly waived his LEOBOR rights. (Def.'s Answer 7.)

Before this Court are cross-motions for summary judgment as to the validity and enforceability of the purported waiver provision of the Agreement. (Pl.'s Mot. for Summ. J. 1; Def's Obj. to Pl.'s Mot. for Summ. J. & Cross-Mot. for Partial Summ. J. as to Validity of Agreement.) Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 42-28.6-4.

I

Facts and Travel

The following facts are not in dispute. Defendant terminated Plaintiff from its employment on January 20, 2022. (Def.'s Answer ¶ 49.) In response to Plaintiff's request for a LEOBOR hearing pursuant to § 42-28.6-4, Defendant responded that Plaintiff was not entitled to a hearing in light of the Agreement. *Id.* ¶ 56. The underlying details of any disciplinary matters related to the Agreement and Plaintiff's termination are not relevant at this time; as such, this Decision will focus on the terms of the Agreement itself.

Plaintiff and Defendant entered into the Agreement "as of the 8[th] day of December 2021[.]" (Pl.'s Mem. in Supp. of Mot. for Summ. J. (Pl.'s Mem.) Ex. C (Agreement), at 1.) Plaintiff signed the Agreement on that day; however, Defendant Colonel James Manni (the Colonel) did not countersign until January 19, 2022. (Def.'s Answer ¶¶ 15, 23, 47.) The Agreement states that Defendant had "conducted an internal investigation" regarding Plaintiff and had concluded that Plaintiff "violated certain Department standards of conduct . . . which warrant charging [Plaintiff] under the [LEOBOR.]" (Pl.'s Mem. Ex. C (Agreement), at 1.) After listing the specific violations, the Agreement states that "the Colonel is prepared to file a Complaint and Notice under the LEOBOR with various charges and specifications" but that Defendant and Plaintiff, through the Agreement, desired to resolve the charges so as to "avoid costly and time-consuming LEOBOR-litigation[.]" *Id.* at 2-3.

By the terms of the Agreement, Plaintiff and Defendant "intend[ed] to be legally and equitably bound" and agreed to the following: (1) Plaintiff admitted to the stated conduct violations; (2) Plaintiff would be suspended for two days, to be served by January 31, 2022, followed by a "front office duty assignment" of no less than thirty days; and (3) "[u]pon

[Plaintiff's] return from serving the suspension days, [Plaintiff] shall be deemed to be placed on probationary status . . . for . . . [three months]" (Probationary Period), during which:

> "[Plaintiff] shall not be afforded rights under the LEOBOR. [Plaintiff] acknowledges the expectation of the Colonel that upon return to duty following the suspension days, and during the Probationary Period, he shall be compliant with Department rules, regulations, policies, and general orders, and that his failure to do so shall result in the imposition of more stringent discipline, up to and including termination of employment." *Id.* at 3-4.

The Agreement also provides that:

> "[Plaintiff] acknowledges that he is entering into this Agreement freely, voluntarily, knowingly, and intelligently. [Plaintiff] also represents that he has had an adequate opportunity to carefully read and review this Agreement with his legal counsel, and that he has been fully advised and is cognizant of his rights and obligations hereunder. [Plaintiff] further acknowledges and agrees that he has received full and competent representation by his legal counsel in conjunction with the negotiation and execution of this Agreement, as well as full, fair and competent representation by the Rhode Island Trooper's Association, which approves the terms of this Agreement as acknowledged below." *Id.* at 5.

Plaintiff was scheduled to work on December 25, 2021 but was unable to report for reasons Defendant viewed as violative of its rules and policies. (Def.'s Answer ¶ 33; Def.'s Mem. in Supp. of its Obj. to Pl.'s Mot. for Summ. J. (Def.'s Mem.) 2-3.) Plaintiff continued to be out of work as of December 28, 2021, at which time the Internal Affairs Captain informed Plaintiff that Defendant would discharge Plaintiff's two suspension days retroactively to December 25 and 26, notwithstanding that Plaintiff had been recorded as sick on those days. Def.'s Answer ¶ 37. On December 29, 2021, the Internal Affairs Captain spoke with Plaintiff in a scheduled "internal affairs interrogation." *Id.* ¶¶ 38, 41. Subsequently, Defendant informed Plaintiff that he would be placed on administrative leave, not sick leave. *Id.* ¶ 42. Colonel Manni signed the Agreement on January 19, 2022, and Defendant terminated Plaintiff the

following day. *Id.* ¶¶ 47, 49. Plaintiff's last shift actually worked was December 24, 2021, and it is undisputed that Plaintiff did not work a shift after that day. *Id.* ¶ 54.

Before this Court, Plaintiff contends that he was entitled to a LEOBOR hearing prior to his termination and seeks to avoid application of the Agreement's LEOBOR waiver by asserting two alternate arguments: (1) any purported waiver of his statutory LEOBOR rights is unenforceable because it was not "clear and unmistakable," (Pl.'s Mem. 10-12); and (2) even if the Agreement is enforceable, the Probationary Period never began because Plaintiff did not return to duty following his suspension days and, as a result, his LEOBOR rights remain in force. *Id.* at 7-9. In contrast, Defendant's cross-motion requests partial summary judgment as to the validity and enforceability of the Agreement's waiver provision. (Def.'s Mem. 11.)

II

Standard of Review

"'It is a fundamental principle that [s]ummary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously.'" *Botelho v. City of Pawtucket School Department*, 130 A.3d 172, 176 (R.I. 2016) (quoting *Law Firm of Thomas A. Tarro, III v. Checrallah*, 60 A.3d 598, 601 (R.I. 2013)) (citation omitted). "Summary judgment is appropriate when . . . the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Delta Airlines, Inc. v. Neary*, 785 A.2d 1123, 1126 (R.I. 2001); *see also* Super. R. Civ. P. 56(c). "In deciding a motion for summary judgment, [a] [c]ourt views the evidence in the light most favorable to the nonmoving party." *Mruk v. Mortgage Electronic Registration Systems Inc.*, 82 A.3d 527, 532 (R.I. 2013). Moreover, "'the moving party bears the initial burden of establishing the absence of a genuine issue of fact.'" *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (quoting

Robert B. Kent et al., *Rhode Island Civil Procedure* § 56:5, VII-28 (West 2006)). The "nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions[,] or mere legal opinions." *Mruk*, 82 A.3d at 532 (internal quotation omitted).

III

Analysis

Rhode Island courts "treat[] settlement agreements as we do any other type of contract, applying our general rules of contract construction." *Furtado v. Goncalves*, 63 A.3d 533, 537 (R.I. 2013); *State Department of Environmental Management v. Administrative Adjudication Division*, 60 A.3d 921, 925 (R.I. 2012). "When interpreting a contract, our primary goal is to ascertain the intent of the parties." *Retirement Board of Employees' Retirement System of the State of Rhode Island v. DiPrete*, 845 A.2d 270, 283 (R.I. 2004). "When there is only one reasonable interpretation of a contract, the contract is deemed unambiguous." *Roadepot, LLC v. Home Depot, U.S.A., Inc.*, 163 A.3d 513, 519 (R.I. 2017). "In determining whether a contract is ambiguous, a court should read the contract in its entirety and 'give words their plain, ordinary, and usual meaning.'" *Id.* (quoting *Botelho*, 130 A.3d at 176). The contract is to be read in an ordinary and common sense manner; and "'[i]n situations in which the language of a contractual agreement is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids.'" *Id.* at 519-20 (quoting *Botelho*, 130 A.3d at 176-77).

To the extent extrinsic facts pertaining to LEOBOR are relevant, however, the Court notes that "LEOBOR 'is the exclusive remedy for permanently appointed law-enforcement officers who are under investigation by a law-enforcement agency for any reason that could lead to disciplinary action, demotion, or dismissal.'" *City of Pawtucket v. Laprade*, 94 A.3d 503, 511

(R.I. 2014) (quoting *In re Simoneau*, 652 A.2d 457, 460 (R.I. 1995)). "LEOBOR 'is remedial in nature,' and 'was enacted to protect police officers from infringements of their rights in the course of investigations into their alleged improper conduct.'" *Id.* (quoting *Ims v. Town of Portsmouth*, 32 A.3d 914, 925 (R.I. 2011)). As such, it is generally liberally interpreted in favor of its protected class of officers. *Ricci v. Rhode Island Commerce Corp.*, 276 A.3d 903, 906-07 (R.I. 2022).

A

Contractual Consideration: Bargained-For Exchange

As a preliminary matter, the Court must address Plaintiff's argument, raised for the first time in his Reply Memorandum, that:

> "[T]he terms of such an Agreement need to be negotiated, Plaintiff must have the right to counsel (or at least be notified of his or her right to a lawyer) in connection with the negotiation of the Agreement, [and] there must be valid consideration for the waiver at issue . . . None of those things happened here." (Pl.'s Reply Mem. in Resp. to Def.'s Obj. to Mot. for Summ. J. & in Supp. of Obj. to Def.'s Mot. for Partial Summ. J. (Pl.'s Reply Mem.) 4.)

Our Supreme Court has not determined whether a movant may assert new arguments in a reply brief. Federal District Courts in the First Circuit uniformly foreclose new arguments in reply briefing on dispositive motions. *See, e.g., Noonan v. Wonderland Greyhound Park Realty LLC*, 723 F. Supp. 2d 298, 349 (D. Mass. 2010) (considering new argument raised in reply waived); *Rivera Concepcion v. Puerto Rico*, 682 F. Supp. 2d 164, 169 n.5 (D.P.R. 2010) (refusing to consider arguments in reply memorandum because "[r]eply memorandums in support of dispositive motions are limited to rebuttal of factual and legal arguments raised in the opposition"). Therefore, the Court cautions movants to include all substantive arguments in the opening memorandum and otherwise utilize the reply memorandum only for rebuttal.

Nevertheless, because Plaintiff's additional arguments lack merit, it is appropriate to address them briefly in the interest of a thorough review.

First, Plaintiff provides no authority for the proposition that an Agreement is invalid absent review by counsel. *See generally* Pl.'s Reply Mem. As a general matter, contracts are executed without advice of counsel every day; and, specifically as to LEOBOR, a law enforcement officer has the right to be represented by counsel *at his request*. Section 42-28.6-2(9). There is no evidence before this Court that Plaintiff requested and was denied counsel.[1]

Second, Plaintiff's remaining contention is that he did not negotiate to receive any benefit in exchange for executing the Agreement—i.e., that there was no consideration—because he "had no idea that anything more serious than 'a letter [in his jacket]' was being contemplated" and "he was never threatened with more serious discipline to induce him to accept [the] terms." (Pl.'s Reply Mem. 4-5.) "It is a well-established principle that a valid contract requires 'competent parties, subject matter, a *legal consideration*, mutuality of agreement, and mutuality of obligation.'" *Voccola v. Forte*, 139 A.3d 404, 414 (R.I. 2016) (quoting *DeLuca v. City of Cranston*, 22 A.3d 382, 384 (R.I. 2011) (mem.)). "'The subjective intent of the parties may not properly be considered by the Court; rather, we consider the intent expressed by the language of the contract.'" *Botelho*, 130 A.3d at 176 (quoting *JPL Livery Services, Inc. v. Rhode Island Department of Administration*, 88 A.3d 1134, 1142 (R.I. 2014)).

[1] Although Plaintiff does not identify case law supporting this argument, he invokes the language of cases dealing with the validity of releases. *See, e.g.*, *Miller v. Metropolitan Property & Casualty Insurance Co.*, 111 A.3d 332, 341 (R.I. 2015) ("[A] release shall be considered to be valid if the person entering into the release received consideration, had knowledge of the consequences of executing the document, and was represented by counsel in the process.") Waiver of LEOBOR protections in a disciplinary agreement is not the same as a release of claims.

Regardless of what Plaintiff subjectively believed to be the potential consequences of his initial disciplinary violation, the objective language of the Agreement included that: (1) Plaintiff conceded the existence of just cause to discipline him (Pl.'s Mem. Ex. C (Agreement), at 3); (2) Plaintiff could request a hearing under LEOBOR to challenge the contemplated discipline, *id.* at 2; (3) Plaintiff and Defendant intended to fully resolve the disciplinary matter via the Agreement, *id.* at 3; and (4) but for the Agreement, "[Defendant] would proceed to vigorously prosecute [Plaintiff with] discipline pursuant to the procedures of the LEOBOR." *Id.* at 2. The Agreement expressly acknowledges "consideration of [these] mutual covenants." *Id.* at 3.

In light of this mutuality of agreement, obligation, and consideration, Plaintiff's contention that the Agreement is invalid is unavailing. *See Lapan v. Lapan*, 100 R.I. 498, 501, 217 A.2d 242, 244 (1966) ("Under our cases, a claim forborne, if premised on an honest belief in its justness, constitutes consideration sufficient to support a promise even though, if prosecuted, it might have been defeated."). As such, it is also unnecessary to address Plaintiff's various additional arguments taking issue with Defendant's failure to comply with LEOBOR in advance of executing the Agreement. *See, e.g.*, Pl.'s Reply Mem. 3 n.3; Hr'g Tr. 14:17-15:11, Apr. 7, 2022; Pl.'s Appl. ¶ 58(a). Any disputed right to LEOBOR protections at that time was mutually resolved by the Agreement, and Plaintiff has plainly "agree[d] that disciplinary issues can be resolved prior to issuance of a formal LEOBOR complaint." (Pl.'s Reply Mem. 4.) Therefore, the sole legal issue presented by the parties' cross-motions implicates only Plaintiff's LEOBOR rights, if any, with regard to his January 20, 2022 termination and any related investigation or interrogation.

B

Enforceability of Contractual LEOBOR Waiver

With the lens properly focused, we move to Plaintiff's next contention that any purported waiver of his LEOBOR rights in the Agreement is unenforceable because the waiver language was not "clear and unmistakable." (Pl.'s Mem. 10.) In support, Plaintiff cites to *Weeks v. 735 Putnam Pike Operations, LLC*, 85 A.3d 1147, 1158 (R.I. 2014). *Weeks* addressed whether a waiver of judicial forum in a general arbitration provision of a collective bargaining agreement (CBA) was effective to bar litigation of employment discrimination claims arising under the Rhode Island Civil Rights Act (RICRA) and the Rhode Island Fair Employment Practices Act (FEPA). *Weeks*, 85 A.3d at 1149-50. The *Weeks* Court concluded that "a general arbitration provision in a CBA which contains no specific reference to the state anti-discrimination statutes at issue does not constitute a clear and unmistakable waiver of the plaintiff's right to a judicial forum in which to litigate claims arising under the RICRA and the FEPA." *Id.* at 1160. The Court contrasted this holding with the United States Supreme Court's ruling in *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 252, 260 (2009), which held that waiver of claims arising under specifically enumerated statutes in an arbitration provision was clear and unmistakable. *Weeks*, 85 A.3d at 1158. Of note, the waiver provision at issue in *14 Penn Plaza LLC* was upheld although it used neither "judicial forum" nor "waiver" but instead generally stated that "'[a]ll such claims shall be subject to the grievance and arbitration procedures . . . as the sole and exclusive remedy for violations.'" *Id.* (quoting *14 Penn Plaza LLC*, 556 U.S. at 252).

Here, the Agreement explicitly identifies LEOBOR by name and therefore aligns with *14 Penn Plaza LLC* as a valid waiver. *Weeks*, 85 A.3d at 1158. Plaintiff attempts to avoid this outcome by interpreting *Weeks* as standing for the proposition that a valid waiver must "identify

the statute at issue ***and*** tell [Plaintiff] that his . . . right to have [claims arising under that statute] heard in a judicial forum was being waived[.]" (Pl.'s Mem. 13 (emphasis in original).) Plaintiff's view of *Weeks* is incorrect. The *Weeks* Court distinguished *14 Penn Plaza LLC* by succinctly observing that "the CBA before us, unlike the one at issue in *14 Penn Plaza*, does not contain any reference to the RICRA or the FEPA." *Weeks*, 85 A.3d at 1159. The *Weeks* Court focused entirely on the presence or absence of the waiver's explicit reference to the relevant statutes and did not discuss any further requirement that a waiver must use specific terms or provide a detailed explanation. *Id.* As evidenced by the valid waiver upheld in *14 Penn Plaza LLC* and acknowledged in *Weeks*, it is not necessary to use the words "judicial forum" or "waiver." *See 14 Penn Plaza LLC*, 556 U.S. at 252.

To the extent Plaintiff implies that he did not "knowingly" execute the Agreement because Defendant did not "explain its terms to [Plaintiff] before execution," (Pl.'s Appl. ¶ 17), that argument lacks merit. As our Supreme Court observed in a case involving very similar facts to the instant matter: "Section 42-28.6-4 provides that a law enforcement officer is entitled to a hearing regarding any charge against him that may result in any punitive action being taken. The plaintiff is charged with constructive knowledge of the right afforded him under this statute." *McGee v. Stone*, 522 A.2d 211, 215 (R.I. 1987). For this same reason, Plaintiff's repeated argument taking issue with the Agreement's use of the acronym "LEOBOR" also fails as it ignores that the Agreement defines "LEOBOR" on page one as "the Law Enforcement Officers' Bill of Rights, R.I.G.L. 42-28.6-1 *et seq*." (Pl.'s Mem. Ex. C (Agreement), at 1.)

At bottom, Plaintiff's argument is that a clear and unmistakable waiver must, in addition to identifying the specific statutory right, "*describe in express terms the nature of that right and the consequence of the waiver*." (Pl.'s Mem. 17 (emphasis in original).) Plaintiff offers no

support for this contention, but his reference to "nature and consequences" seems to impliedly argue for adoption of waiver requirements more commonly found in cases involving waiver of indictments. *See, e.g., Alessio v. Howard*, 110 R.I. 478, 483-84, 293 A.2d 919, 922 (1972) (using language of "nature and consequences"). It should be noted, however, that:

> "A plea of guilty differs in purpose and effect from a mere admission or an extrajudicial confession; it is itself a conviction . . . Out of just consideration for *persons accused of crime*, courts are careful that a plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences." *Kercheval v. United States*, 274 U.S. 220, 223 (1927) (emphasis added).

Considerations applicable to persons accused of crime—specifically their very substantial liberty interests—are easily distinguishable from any concerns relevant to Plaintiff's contractual waiver of a LEOBOR hearing in an employment context. This Court therefore declines to adopt Plaintiff's proposed rule that a valid waiver on these facts requires an explanation of its nature and consequences. *McGee*, 522 A.2d at 215.

Finally, Plaintiff takes great pains to "[s]eparat[e] out the plain language of each sentence" of the Agreement in an attempt to show that there exists no clear and plain waiver. (Pl.'s Mem. 19-20.) This effort ignores the requirement that, "[i]n determining whether a contract is ambiguous, a court should read the contract *in its entirety*[.]" Roadepot, *LLC*, 163 A.3d at 519 (emphasis added). Plaintiff's "attempt[] to unilaterally imbue with a more personally advantageous meaning the terms to which he agreed are unavailing. His waiver is clear on its face[.]" Rhode *Island Public Telecommunications Authority v. Russell*, 914 A.2d 984, 992 (R.I. 2007). Plaintiff consented to a two-day suspension and three-month Probationary Period in lieu of taking his chances before a LEOBOR hearing committee. (Pl.'s Mem. Ex. C (Agreement), at 3) ("[I]t is now the intention of [Plaintiff] and [Defendant] to fully resolve their

disputes and thereby avoid costly and time-consuming LEOBOR litigation[.]"). The Agreement provided that Plaintiff would not be afforded LEOBOR rights during the Probationary Period and his failure to comply with relevant rules during that period would "result in the imposition of more stringent discipline, up to and including termination of employment." *Id.* at 4.

This language is plain and unambiguous. *Roadepot, LLC*, 163 A.3d at 519; *McGee*, 522 A.2d at 213. Plaintiff's argument that the waiver at issue in *McGee* was more thorough and arguably more carefully drafted does not necessitate the conclusion that the waiver at issue in this matter was unclear. *Cf. McGee*, 522 A.2d at 213.

C

Commencement of Probationary Period

Having determined that the Agreement contains an unambiguous provision that specifically identifies waiver of Plaintiff's LEOBOR rights, it is necessary to reach Plaintiff's final argument that the waiver was conditioned on commencement of the Probationary Period. Plaintiff argues that the plain language of the Agreement states that his LEOBOR rights would be suspended only during the Probationary Period following his suspension. (Pl.'s Mem. 7.) He reasons that, because it is undisputed that he never returned to work after December 25 and 26, 2021, the Probationary Period never commenced, and his LEOBOR rights therefore remained in effect at his termination on January 20, 2022. *Id.*

"A condition is an act or event that qualifies a promised performance." Joseph M. Perillo, *Contracts* § 11.2, at 381 (7th ed. 2014). The relevant section of the Agreement refers to the Probationary Period as commencing "[u]pon [Plaintiff's] return from serving the suspension days[.]" (Pl.'s Mem. Ex. C (Agreement), at 4.) Plaintiff's argument focuses on what is meant by

the word "return."[2] He contends that the Agreement is unambiguous that he could not be considered "returned" to work until he had worked a shift. (Pl.'s Mem. 7.) Alternatively, "return" could be read to mean the three-month period of employment immediately following the two-day suspension period. The primary difference between these two views is whether the intent of the Agreement is to focus on Plaintiff's work *schedule* or work *status*.

Although Plaintiff has identified a potential disputed meaning, "the mere fact that parties differ as to the meaning of an agreement does not necessarily mean that the agreement is in fact ambiguous." *Young v. Warwick Rollermagic Skating Center, Inc.*, 973 A.2d 553, 560 (R.I. 2009). It is undisputed that Plaintiff was scheduled to work on December 25, 2021. (Pl.'s Appl. ¶ 32.) Therefore, even under Plaintiff's proposed interpretation, the Probationary Period would have commenced had he worked that shift.

> "A contracting party impliedly obligates himself to cooperate in the performance of his contract and the law will not permit him to take advantage of an obstacle to performance which he has created or which lies within his power to remove . . . We also have noted that should one party to the contract prevent[] the happening or performance of a condition precedent that is part of the contract, that action eliminates the condition precedent." *1800 Smith Street Associates, LP v. Gencarelli*, 888 A.2d 46, 56 (R.I. 2005) (internal quotations and citations omitted).

Viewing the facts in the light most favorable to Defendant, Plaintiff was absent from work on December 25, 2021 due to voluntary intoxication. (Def.'s Answer ¶¶ 33-34.) Assuming that fact to be true, as we must at this stage, adopting Plaintiff's proposed interpretation would give Plaintiff unilateral authority to avoid the Agreement by repeatedly failing to report to work—a disciplinary violation in-and-of-itself.[3] Plaintiff's Probationary Period began either immediately

[2] Defendant does not address this argument in its response. *See generally* Def.'s Mem.

[3] Plaintiff alleges that his absence on December 25, 2021 was due to a "mental health crisis." (Pl.'s Appl. ¶ 33.) At this time, Plaintiff has not alleged that Defendant violated any of the

after serving his suspension days or when he was scheduled to return to work on December 25, 2021. Under either interpretation, the Probationary Period had commenced as of December 29, 2021, when the Internal Affairs Captain interviewed or interrogated Plaintiff, and as of January 20, 2021, when Defendant terminated Plaintiff. Any dispute as to the meaning of the word "return" is therefore immaterial. *Young*, 973 A.2d at 560.

Nevertheless, there exists a question of fact as to whether Plaintiff served his suspension days at all. Defendant admits that Plaintiff's absences on December 25 and 26, 2021 were "initially marked as . . . sick day[s]" but were subsequently changed by Defendant to "administrative leave."[4] (Def.'s Answer ¶ 42; Aff. of Colonel James Manni ¶¶ 10-11.) It is unclear whether Plaintiff agreed to this change or whether the parties intended that Defendant could unilaterally and retroactively determine dates of suspension. *See* Pl.'s Mem. Ex. C (Agreement), at 3 (stating only that "[Plaintiff] shall be suspended for two (2) days without pay. Suspension days to be served by January 31, 2022."). This dispute is material because commencement of the Probationary Period—and hence waiver of Plaintiff's LEOBOR rights—was tied to the dates of his suspension. *See id.* at 4; *see also Inland American Retail Management LLC v. Cinemaworld of Florida, Inc.*, 68 A.3d 457, 465 (R.I. 2013) ("summary judgment is inappropriate where references to extrinsic evidence and the surrounding circumstances must be relied on to discern the intent of the contracting parties"). Resolution of this dispute requires an evidentiary hearing to determine the parties' intent. *O'Connor v.*

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various state or federal statutes that offer protection for individuals with disabling mental impairments. *See, e.g.*, G.L. 1956 § 28-5-1 *et seq.* (State Fair Employment Practices Act); G.L. 1956 § 42-112-1 *et seq.* (Civil Rights Act of 1990); 42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act).

[4] We pause to note Defendant's oral argument before this Court that LEOBOR was not intended to be used as "procedural trickery." (Hr'g Tr. 8:6-7, Apr. 7, 2022.)

McKanna, 116 R.I. 627, 634, 359 A.2d 350, 354 (1976) (reversing grant of summary judgment where there existed a dispute as to the intent of the parties).

IV

Conclusion

For the reasons set forth herein, this Court grants Defendant's Cross-Motion for Partial Summary Judgment because the Agreement and its attendant waiver provision are valid and enforceable.

This Court otherwise denies Plaintiff's Motion for Summary Judgment because there exists a disputed issue of material fact as to whether the parties intended through the Agreement to grant to Defendant the unilateral authority to retroactively determine Plaintiff's suspension days. Resolution of this factual issue is necessary to determine whether Plaintiff ever served his suspension days, thereby triggering his Probationary Period and waiver of his LEOBOR rights.

Counsel shall prepare the appropriate orders for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**John Doe v. State of Rhode Island, Division of the State Police, et al.**
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COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**November 28, 2022**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
For Plaintiff:	**Carly B. Iafrate, Esq.**
For Defendant:	**D. Peter DeSimone, Esq.** **Vincent F. Ragosta, Jr., Esq.** **Adam Sholes, Esq.**